

BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

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The Bureau for Private Postsecondary Education (BPPE) is responsible for oversight of private postsecondary educational institutions. All non-exempt private postsecondary educational institutions operating in California, regardless of the school's actual physical location, must be approved by BPPE to operate in the state. The Bureau regulates over 1,000 institutions. BPPE's enabling act, the California Private Postsecondary Education Act of 2009, is codified at Education Code section 94800 *et seq.* The powers and duties specified in the Act are vested in the Director of the Department of Consumer Affairs (DCA), which in turn delegates that responsibility to BPPE as a departmental bureau. BPPE's regulations are in Division 7.5, Title 5 of the California Code of Regulations (CCR).

Operating within, and as a part of, the larger DCA, the law establishes BPPE's purpose as (a) protecting students and consumers against fraud, misrepresentation, or other business malpractices at postsecondary institutions that may lead to loss of student tuition and related educational funds; (b) establishing and enforcing minimum standards for ethical business practices and the health, safety, and fiscal integrity of postsecondary institutions; and (c) establishing and enforcing minimum standards for instructional quality and institutional stability for all students.

Private for-profit schools are of particular concern within the education sector given the last two decades of alleged abuses. The number of private for-profit schools has grown substantially in number and student attendance since the 1980s, as has its share of major public education public

subsidies. The rationale for their regulation combines two concerns: (1) the irreparable harm to students from years of investment and student loans without graduation or employment results; and (2) the possible waste of substantial public financing. Increased scrutiny of the for-profit industry arose in the aftermath of a series of studies beginning with the 2012 U.S. Senate [Harkin Report](#), which documented a host of problems with for-profit schools, including misleading claims of graduation benefits, payment of commissions to salespersons based on the number of students recruited, low graduation rates, low job acquisition, and unpaid loan accumulation by students.

Federal Regulation

The regulatory picture of the private for-profit education industry is complicated by its national implications. As of 2015, private for-profit schools received an average of 86% of their revenue from federal grants and loans by the U.S. Department of Education (USDOE).¹ In addition to the federal funds, private for-profits received a similar increase in federal GI bill funding from the U.S. Department of Veterans Affairs. Title 38 of the United States Code provides veterans with public funding for tuition payments as well as some living expense amounts.

Recent efforts to regulate at the federal level include a “gainful employment” rule intended to require a record of employment success for federal funds receipt and a system of loan repayment for students who have been defrauded or left with a closed school and no chance for graduation. Both are at risk in the current federal administration under USDOE Secretary Betsy DeVos. The

¹ According to the 2017–year version of the National Center for Education Statistics, which is part of the U.S. Department of Education’s Institute of Education Sciences, 86.5% of private for-profit undergraduate degree-granting institutions received federal financial aid, and 69.8% of the students received federal grant during school year 2015–16. While the number of institutions that received federal aid has declined since 2010–11, the data show little change in the percentage of such institutions receiving federal aid from 2010–11 through the 2015–2016 school year (see [data](#)).

DeVos USDOE has hired numerous former lobbyists and officials of the private for-profit industry, including noted abusers, as department officials.²

Complicating state regulation of the private for-profits is the substantial delegation of state regulation under the “[State Authorization Reciprocity Agreements](#)” (SARA). This system essentially allows a school to choose its own state regulator and then arrange reciprocal approval by other states—thus bypassing performance requirements and other regulations at the state level. To date, California is the only state declining to join SARA. Its entry would substantially impact BPPE’s regulatory powers, particularly given the growth of distance learning—where California students may be enrolled in schools with a *situs* in another state. Effective July 1, 2017, certain out-of-state private schools who enroll California resident students must register with the Bureau, pay a \$1,500 registration fee, and submit required documentation.

California Regulation

BPPE is governed by the California Private Postsecondary Education Act of 2009. The Bureau has authority to cite, revoke, suspend, place on probation, or bring an action for equitable relief against any approved institution if it violates applicable law. Its jurisdiction includes all private educational institutions, including private non-profits. However, most of its regulatory focus has been on the for-profit sector which has most manifested the serious problems noted *supra*.

To implement its standards, BPPE maintains an Enforcement Section to handle complaints, investigations, and other actions. The Bureau also reviews institution applications for

² See the extensive documentation in the reporting of journalist David Halperin, see <https://muckrack.com/david-halperin/articles>.

initial and renewal approval to operate within California.

As a bureau within DCA, BPPE is not governed by a multimember board. Instead, BPPE operates under the oversight of a Bureau Chief appointed by the Governor and under the direct authority of the DCA Director. BPPE has a statutorily-mandated Advisory Committee tasked with advising BPPE on matters related to private postsecondary education and the administration of the Bureau's governing statutes, including an annual review of the fee schedule, licensing, and enforcement.

The twelve members of the Advisory Committee must include: three consumer advocates, one each appointed by the DCA Director, the Senate Rules Committee, and the Assembly Speaker; two current or past students of private postsecondary institutions, appointed by the DCA Director; three representatives of private postsecondary institutions, appointed by the DCA Director; two public members, one each appointed by the Senate Rules Committee and the Assembly Speaker; and two non-voting *ex officio* members (the chairs of the Senate and Assembly policy committees with jurisdiction over legislation relating to BPPE).

BPPE maintains the [Student Tuition Recovery Fund](#) (STRF) to mitigate student losses when institutions close, fail to pay or reimburse federal loan proceeds, or fail to pay judgments against them. The STRF is funded through student fees. Statutes require institutions to charge fifty cents per \$1,000 of institutional charges to be paid into the STRF. The 2017–18 state fiscal year's fund balance was \$26,295,000, and as of January 18, 2019, the fund balance is \$26,143,000.

BPPE also maintains the Office of Student Assistance and Relief (OSAR) to advance and promote the rights of students of private colleges and to assist students who suffer economic loss due to the unlawful activities or closure of private colleges. The chief of the OSAR is statutorily

required to attend, testify, and answer questions at each Advisory Committee meeting.

At this writing, the Advisory Committee has two vacancies: one for a past student of a private postsecondary institution and the other for a consumer advocate. The existence of these vacancies presents problems because of the recent amendment to its statute requiring a quorum to consist of a majority of all voting member positions and when two or more positions are left vacant, it makes achieving the required quorum more difficult, and has precluded some early 2019 meetings. This problem has led to a recent proposal to restore the previous quorum standard of a majority of appointed members (filled positions).

CSAAVE Rulemaking

California State Approving Agency for Veterans Education (CSAAVE), which is part of the California Department of Veterans Affairs (CalVet), oversees and approves or disapproves veterans' education and training programs receiving federal Title 38 veterans' benefit funding. It prevents waste and abuse of GI Bill money by promoting quality in veterans' education through evaluating and monitoring the programs offered in California. On March 1, 2019, CSAAVE [noticed](#) its modified proposal to adopt sections 443, 444, 445, 446, and 447, Title 12 of the CCR to add requirements on postsecondary educational institutions that seek to enroll veterans eligible for Title 38 funds. To be specific, the new sections would ensure that California institutions should comply with federal and state laws and regulations, regarding accreditation to operate as a California Private Postsecondary Institution, and regarding federal and state requirements and standard applying to Title 38 eligibility. Also, the new sections would prevent the institutions' fraudulent or deceitful advertising and misrepresentation of CSAAVE's approval. At this writing, CalVet has reviewed this rulemaking file to submit to Office of Administrative Law (OAL).

Although this rulemaking would not directly affect BPPE, CSAVVE’s regulatory action under this new regulation would have an impact on for-profit institutions that have been also overseen by the Bureau and its intervention to prevent abuses could be consonant with the BPPE mandate. Its import is accentuated by the higher tuition payments allowed under GI Bill Title 38 financing, as well as a room and board allowance. As discussed *supra*, that additional public benefit has made those in the military a priority population for student recruitment by the historically abusive for-profit schools.

MAJOR PROJECTS

Regulating Out-of-State Institutions

Out-of-State School Registration Requirement. Because California has not joined SARA, an out-of-state school which is initially authorized by a state other than California, must again be authorized by California for its distance education programs used by California students. [SB 1192 \(Hill\) \(Chapter 593, Statutes of 2016\)](#) required BPPE to implement regulations related to out-of-state postsecondary institutions. Although the Bureau had adopted Emergency Regulations that required out-of-state private postsecondary schools to register with the Bureau and participate in the STRF, the previous Emergency Regulations expired on February 27, 2018. Accordingly, the Bureau needed to adopt a replacement rule to provide the required “out-of-state school registration.”

On March 19, 2019, OAL [approved](#) BPPE’s regulatory action to revise and make permanent section 71398(c) of CCR, regarding applications for the re-registration of out-of-state institutions. While on July 3, 2018, OAL [approved](#) BPPE’s regulatory package to add Article 3.5—sections 71396, 71397, 71398, and 71399—to Chapter 2 of Division 7.5, Title 5 of CCR, subdivision (c) of section 71398 was withdrawn by the Bureau because of an inconsistency in the

language as to the timing for re-registration. Under the Bureau's [modified text](#), if BPPE receives a fully compliant re-registration application before the registration's expiration, the out-of-state institution shall be deemed re-registered.

On February 5, 2019, OAL received DCA's [Form 400](#) which was for resubmittal of withdrawn nonemergency filing under the Government Code sections 11349.3 and 11349.4. On March 19, 2019, OAL [filed](#) it with the California Secretary of State according to section 100 of Title 1 of CCR which is known as section 100 filing. [[24:1 CRLR 181-182](#)]

New section 71398(c) will become effective on July 1, 2019.

Adjudication

Assessments of Fines and Orders of Abatement

During the coverage period of this Reporter, BPPE has issued orders of abatement and imposed fines to the following institutions:

- Academy of Beauty (March 5, 2019)
- Academy of Esthetics and Cosmetology (March 26, 2019)
- Advanced Beauty Techs Academy (January 9, 2019)
- Advanced Medical School of Nursing (December 6, 2018)
- Alhambra Medical University (March 12, 2019)
- Alliance School of Trucking (December 4, 2018)
- American Beauty Academy (March 27, 2019)
- American Beauty College (February 8, 2019)
- American English Language School (March 21, 2019)
- American Truck School (March 21, 2019)
- American University of Complementary Medicine (March 7, 2019)
- Amy Beauty School (March 25, 2019)
- Antioch University (February 27, 2019)
- Arena Education (February 7, 2019)
- Asian American International Beauty College (November 7, 2018)
- Atlas Studio (January 31, 2019)
- Austin University (January 17, 2019)
- Avant Vocational Academy (January 29, 2019)
- Bay Area Training Academy (January 10, 2019)

- Beat Lab Academy (January 31, 2019)
- Bentley-Forbes Security Training, Inc. (March 21, 2019)
- Brentwood University (February 8, 2019)
- Bryan University (February 27, 2019)
- California Hair Design Academy (December 28, 2018)
- California Language Academy (March 21, 2019)
- California Preparatory College (February 6, 2019)
- California Vocational Cosmetology College (February 13, 2019)
- Career Institute (January 31, 2019)
- Champion Steno, LLC. (February 28, 2019)
- College of Medical Arts (January 14, 2019)
- College Mile (February 21, 2019)
- Computer Institute of Technology (March 11, 2019)
- Computer Technologies Program (January 14, 2019)
- Contractors State License Center (February 4, 2019)
- Cosmo Beauty Academy (February 20, 2019)
- Crescent College, Inc. (January 10, 2019)
- Delancy Street Academy (January 29, 2019)
- Devry University (February 20, 2019)
- Ding King Training Institute (March 5, 2019)
- Dolphin Trucking School (April 3, 2019)
- Eagle Rock College (January 8, 2019)
- Elbe Institute (November 14, 2018)
- ELS Language Centers (November 21, 2018)
- Encore Flight Academy (January 24, 2019)
- Equinology, INC. (February 13, 2019)
- Evon's Legendary Microblading and Permanent Makeup (January 24, 2019)
- Feldenkrais Institute of San Diego (February 14, 2019)
- Functional Diagnostic Nutrition (December 12, 2018)
- Get Faded Barber College (February 7, 2019)
- Growthx Academy (March 21, 2019)
- Gurnick Academy of Medical Arts (November 7, 2018)
- Hair California Beauty Academy (January 10, 2019)
- Horizon School of Technology (January 31, 2019)
- Ilearn Institute (November 29, 2018)
- Independent Training & Apprenticeship Program (1-Tap) (February 28, 2019)
- Intercultural Institute of California (January 18, 2019)
- International Institute of Medical Qigong (February 14, 2019)
- International Public Safety United (February 20, 2019)
- Internexus Los Angeles (November 15, 2018)
- Lambda, Inc. (March 20, 2019)

- Languages, Inc., DBA Berlitz Language (December 6, 2018)
- L.A. Translation and Interpretation (October 23, 2018)
- Lifton Institute of Media and Sciences (March 13, 2019)
- Lu Ross Academy (March 7, 2019)
- Master Truck School (January 7, 2019)
- Medical Career College of Northern California (March 5, 2019)
- Micro Blading Academy (January 28, 2019)
- Micro-Easy Vocational Institute (February 28, 2019)
- Mission Language and Vocational School (November 6, 2018)
- Moler Barber College (November 29, 2018)
- NC Expert (March 7, 2019)
- Newport International United College (November 29, 2018)
- Ocean College (December 4, 2018)
- OIKOS University (January 23, 2019; March 5, 2019)
- Orange County EMT (October 23, 2018)
- Orange County School of Massage (March 13, 2019)
- Oxford Institute of Technology (January 15, 2019)
- Pacific Beauty College of Los Angeles (November 21, 2018)
- Panamerican Learning Center (February 13, 2019)
- Phlebotomy Training Specialists (March 21, 2019)
- Plant Lab (March 12, 2019)
- Quest Nursing Education Center (March 28, 2019)
- Quickstart Intelligence (February 28, 2019)
- Sacramento Ultrasound Institute (December 5, 2018)
- Saint Joseph's School of Nursing (March 7, 2019)
- San Francisco Institute of Architecture (SFIA) (February 20, 2019)
- San Jose Polytechnic University (January 9, 2019)
- School for Self-Healing (December 5, 2018)
- Sebastopol Massage Center (January 24, 2019)
- Sierra Pacific College (February 27, 2019)
- South Bay Massage College (March 27, 2019)
- Southwestern Vocational College (February 21, 2019)
- Sprintzeal Americas LLC (January 17, 2019)
- Stephens College (November 19, 2018)
- Straight Perm Beauty School.com (April 10, 2019)
- Superior Auto Institute A.K.A. Superior Companies LTD (January 16, 2019)
- Technology Training Institute (November 20, 2018)
- The Academy of Radio and Television Broadcasting (November 19, 2018)
- The Acting Corps (November 21, 2018)
- The American Language Kollege, Inc. DBA Talk International (January 16, 2019)
- The Wharton School of the University of Pennsylvania (March 27, 2019)

- Toni & Guy Hairdressing Academy (April 3, 2019)
- Training the Street (February 21, 2019)
- TRI Med Institute, Inc. (November 21, 2018)
- Trinity International University (March 14, 2019)
- Union University of California (January 16, 2019)
- Union Truck Driving School (January 18, 2019)
- United Truck & Car Driving School, Inc. (December 12, 2018)
- University of North Los Angeles (February 6, 2019)
- VV Brows and Beauty (February 27, 2019)
- Wag My Tail, Inc. (November 14, 2018)
- Watsonville Institute of Cosmetology (February 4, 2019)
- Weimar Institute (February 8, 2019)
- West Coast Emergency Medical Training (January 22, 2019)
- William Carey International University (January 28, 2019)

Accusations of Violations

BPPE filed accusations—requesting revocation or suspension of previous approvals to Operate—against the following institutions:

- 1st Academy of Beauty: [Accusation](#) of violations (January 10, 2019)
- American University of Complementary Medicine: [Order Suspending Approval to Operate Degree Granting Programs](#) (January 16, 2019)
- Argosy University: [Emergency Decision](#) (March 4, 2019), [Accusation](#) (March 6, 2019)
- John Ridgel’s Academy of Beauty, Inc.: [Stipulated Surrender and Order](#) (February 24, 2019)
- Orange Valley College: [Stipulated Surrender and Order](#) (February 24, 2019)
- Queenston College of American: [Stipulated Surrender and Order](#) (December 7, 2018)
- Silicon Valley University: [Stipulated Surrender and Order](#) (February 24, 2019)
- The Cosmo Factory Cosmetology Academy: [Accusation](#) (January 10, 2019)
- Vine University: [Order Suspending Degree Granting Programs](#) (February 14, 2019)

Statements of Issues to Deny Approval

BPPE filed statements of issues against following institutions, to deny approvals to operate, alleging that institutions failed to file required documentation compliant with the California Private Postsecondary Education Act of 2009 and with other applicable law:

- Avid Career College ([Statement of Issues](#) on February 7, 2019)
- Empowertech ([Statement of Issues](#) on February 15, 2019)
- Los Angeles Ort Technical Institute DBA Los Angeles Ort College ([Statement of Issues](#) on December 17, 2018)
- Mission Career College ([Statement of Issues](#) on December 27, 2018)
- Professional Schools of Beauty, Fashion and Arts, Inc. ([Statement of Issues](#) on March 19, 2019)
- Pyramind, Inc.; also known as Pyramind Evolving Sound; also known as Institute for Advanced Digital Audio Training ([Statement of Issues](#) on March 26, 2019)

LEGISLATION

[AB 1340 \(Chiu\)](#), as amended April 1, 2019, would amend section 94885, and add article 6.5 (commencing with section 94892.6) to the Education Code regarding private postsecondary education. Section 94885 requires an institution to have either an accreditation by an agency covering the offering of at least one degree program by the institution, or an accreditation plan to become accredited within 5 years of the Bureau's provisional approval to operate the institution. According to the author, this bill would implement a state-level federal Gainful Employment rule, and under this bill, though California cannot control access to federal financial aid, it can regulate a program's authority to enroll new students.

New section 94885(c) would prevent an institution offering a program for gainful employment from enrolling additional California residents above the number enrolled in the

program the previous year if the program fails to pass the federal debt-to-earnings rates measure. New section 94892.6 in new Article 6.5, would require BPPE to use student-specific data to match to quarterly wage data from the Employment Development Department to determine the debt-to-earnings rates measure for gainful employment. This bill also would authorize BPPE to waive the data collection and match requirements if the Bureau determines that sufficient federal data is available. Under this bill, BPPE may access and use any relevant quarterly wage data necessary for the gainful employment data match requirement. The Gainful Employment measure allows an evaluation of the percentage of graduates of a school obtain employment allowing them to pay their education related debt and not default. Such defaults occurring under the “education loan” aegis, as discussed in the introduction *supra*, may impose long term credit disqualification for a wide array of purchases, services, and opportunities. The standard has been a part of federal regulatory imposition during the final years of the Obama Administration but USDOE under Secretary DeVos has been attempting to negate it federally. This bill would provide a state (California) basis for its application. *[A. B&P]*

[AB 1341 \(Berman\)](#), as introduced February 22, 2019, would amend section 94801.5 of, and add sections 94850.2, 94858.5 and 94874.1 to, the Education Code regarding private postsecondary education. According to the author, federal and state laws have provided funding only to nonprofit and public schools while applying stricter guidelines to for-profit institutions seeking access to the taxpayer funds. However, some for-profit colleges are now beginning to use a “nonprofit” or “public” label to avoid regulatory oversight. Accordingly, this bill would specify that only an institution of higher education meeting the proper legal definition of a nonprofit corporation or a public institution of higher education is exempt from the requirements imposed

on an out-of-state private postsecondary institution. New section 94801.5 would clarify that the requirement for an out-of-state private postsecondary school to register with BPPE does not apply to a higher education institution that is either formed as a nonprofit corporation and is accredited by an agency recognized by USDOE or is a public institution of higher education. New section 94850.2 would define a “non-profit corporation,” and new section 94858.5 would define “public institution of higher education.” New section 94874.1 would require BPPE to not approve or verify an exemption for the complaint of an institution not approved to operate by the Bureau or not verified by AG as a nonprofit institution. Adding to this stated concern over possible violation of standards is the possible creation of a “non-profit” entity while the persons and assets of the previous or new for-profit entity actually control and profit from its operation. The provisions of the bill would address this suspected evasion through structures that do not meet proper definitions for “non-profit.” *[A. B&P]*

[AB 1342 \(Low\)](#), as introduced February 22, 2019, would add article 3 (commencing with section 5940) to the Corporations Code regarding nonprofit corporation. According to the author, when a nonprofit school is sold to a for-profit company, the sale could reduce a community’s access to higher education. New section 5940 would require any nonprofit corporation that operates a private postsecondary institution to provide written notice to, and to obtain the written consent of the AG before entering into any agreement or transaction to sell, transfer, lease, exchange, or otherwise dispose of its assets to a for-profit corporation. New section 5941 would specify that within 90 days of the written notice, the AG shall notify the public benefit corporation in writing of the decision to consent, or refuse to consent, to the agreement or transaction. Additional sections impose other obligations and rights for the AG: *i.e.*, new section 5942 would

require one or more public hearings before issuing any written decision; section 5943 grants discretion to consent to any agreement or transaction; section 5944 specifies the right to contract with experts in reviewing proposed agreements or transactions; section 5945 authorizes the adoption of regulations for the enacted bill; section 5946 authorizes AG enforcement of the law; section 5947 specifies the scope of the conditions that may be imposed on an agreement or transaction.

Although not directly affecting the Bureau, this bill would help protect students from for-profit institutions' abuses with enhanced AG involvement where non-profit status claims are made, and BPPE would regulate for-profit schools accordingly under the new law. [*A. Jud*]

[AB 1343 \(Eggman\)](#), as amended April 11, 2019, would add section 94918.5 to the Education Code regarding private postsecondary education. According to the author, the federal 90/10 rule—a 90 percent cap on revenue at for-profit schools from federal Title IV student aid funds—has weakened over time, and a loophole exists that allows predatory programs to target veterans. New section 94918.5 would require a private postsecondary school to enroll residents of California only if no more than 85 percent of the institution's tuition revenue is derived from federal educational financial aid or loans, or if not less than 50 percent of the institution's revenue is dedicated to student instruction. The new section 94918.5 also would require BPPE to adopt regulations that define "instruction." [*A. B&P*]

This measure addresses a longstanding national issue concerning the requirement that schools have proverbial "skin in the game," i.e., that they not be entirely and solely financed from public subsidy. Therefore, the 90–10 rule required that those institutions receiving USDOE subsidies receive no more than 90% of their revenue from that source. Meanwhile, a separate 85–

15 rule requires that schools may not rely on more than 85% of their revenue from federal GI Bill Title 38 funding. But bizarrely, the two have been applied separately and without any cross reference. Hence, the federal education subsidies do not apply to the 85% limit and the federal GI bill subsidies do not apply to the 90% limit. Separating the two allows schools to receive all of their funding from not only public sources, but also federal public sources—contradicting the rationale for each of these rules separately. The new law would apply the more generous 85–15 standard for more public money reliance, but would combine both types of federal funding in calculating the percentages. And it would impose a minimum on a school’s allocation of funds toward instruction, aware that many in the for-profit sector expend almost all of their revenue (almost entirely from public sources) on marketing, chief executive compensation and other expenditures unrelated to the purposes of those appropriations.

[AB 1344 \(Bauer-Kahan\)](#), as amended April 11, 2019, would amend, repeal, and add section 94801.5 of the Education Code regarding private postsecondary education. According to the author, although out-of-state institutions which want to enroll student in California have to register with the Bureau and to pay into the STRF, California lacks any authority to reject the institution or to revoke its registration even if the institution poses a risk to the students. New section 94801.5 would require out-of-state private postsecondary schools to provide BPPE with information regarding adverse actions upon registration and renewal, such as evidence of approval to operate in the state where the institution maintains its main administrative location, or whether the institution had its approval revoked, limited, or subject to conditions by a state or federal agency within five years prior to submitting the registration. Also, new section 94801.5 would

authorize the Bureau to place out-of-state private postsecondary institutions on a probationary status and revoke authorization to enroll California students. *[A. B&P]*

[AB 1345 \(McCarty\)](#), as amended April 11, 2019, would amend section 94897 of, and add section 94841.2 to, the Education Code regarding private postsecondary education. According to the author, for-profit institutions' recruiters has been taught to target veterans and students from underprivileged backgrounds, and the recruiters receive financial rewards for their work based on how many students they recruit. These predatory schools' high-pressure sales tactics bring about misrepresentation of student outcomes. New section 94897 would prohibit an institution from providing financial incentives to any person involved in student recruitment, enrollment, admission, or involved in awarding of financial aid based on the enrollment of a student. New section 94841.2 would define "financial aid." BPPE would regulate for-profit institutions under the new law. *[A. B&P]*

[AB 1346 \(Medina\)](#), as amended April 1, 2019, would amend section 94923 of the Education Code regarding postsecondary education. According to the author, STRF's definition of "economic loss" is unjustly narrow. Although the current definition of "economic loss" is limited to tuition, books, and other charges paid directly to the school, the costs of attending college far exceed the costs of tuition and books alone. New section 94923 would expand the definition of economic loss to include all amounts to the institution, any amounts paid in connection with attending the institution, and all the charges for any educational loan. The new law would affect the Bureau's STRF task. *[A. Appr]*

The above 7 bills, although with varying authors, have been arranged as a package with some common co-sponsors and with uniform support from student groups, consumer advocates,

and veterans' organizations. Their passage will likely depend upon votes in the state senate, where school lobbying opposition is concentrated.

[AB 376 \(Stone\)](#), as amended March 25, 2019, would add Title 1.6C.10 (commencing with section 1788.100) to the Civil Code and amend section 28106 of the Financial Code regarding student loans. Servicers routinely lose paperwork, misapply payments, give inaccurate information, and even steer borrowers into repayment options that add to the overall cost of their loans. However, there is no industry-wide framework at the federal level to regulate the student loan industry. New section 1788.100 of the Civil Code would define terms regarding borrower's rights, such as "borrower" and "servicing." New section 1788.101 of the Civil Code would ban abusive servicing in student loan practices, such as material interference with the ability of a borrower to understand loan terms. New section 1788.102 would create a minimum servicing standard regarding application of payments, paperwork retention, and specialized staff training. New section 1788.103 would require a person engaged in student loan servicing to comply with this new regulation. New section 1788.104 would establish "Student Borrower Advocate" within the Department of Business Oversight (DBO) responsible for reviewing complaints, gathering data and coordination with related state agencies. New section 1788.105 would grant DBO additional monitoring authorities in student loan servicing market to collect better data about the servicing industry. New section 28106 of the Financial Code would require commissioner to administer the new Title 1.6C.10, commencing with section 1788.100, of the Civil Code, governing the student loan borrowers' rights. Although not directly affecting BPPE, this bill's regulation on abusive student loan service market would help BPPE protect students from predatory education market.

[A. B&F]

LITIGATION

Pacific Coast Horseshoeing School, Inc. v. Dean Grafilo, Case 18-15840 (9th Cir.). On November 2, 2018, in *Pacific Coast Horseshoeing School, Inc. v. Dean Grafilo*, Case 18-15840, the U.S. Court of Appeals for the Ninth Circuit received Appellants-plaintiffs’ briefs. Plaintiffs are, respectively, a horseshoeing school and a student who did not have his high school diploma or pass an equivalency examination. The school wanted to admit the plaintiff student but was compelled to reject his application because he did not meet ability-to-benefit requirements under the California Private Postsecondary Education Act of 2009 (“the Act”). On October 23, 2017, plaintiffs filed a [complaint](#) with the U.S. District Court for the Eastern District of California against Dean Grafilo, in his official capacity as Director of DCA, and Dr. Michael Marion, as chief of BPPE. Plaintiffs alleged that the Act violated the First Amendment freedom of speech of those who wanted to teach horseshoeing, and those who wanted to learn it because the Act required unnecessary ability-to-benefit examination for horseshoeing. The District Court held that the Act’s requirement did not violate the First Amendment in its application of “rational basis” review (as opposed to “strict scrutiny” applicable to political speech) because the Act regulated non-expressive conduct. *Pacific Coast Horseshoeing School, Inc. v. Dean Grafilo*, 315 F. Supp. 3d 1195, 1201 (E.D. Cal. 2018).

On May 9, 2018, the plaintiffs filed an appeal with the United States Court of Appeals for the Ninth Circuit. If the appellate court were to find the Act’s requirement unconstitutional, BPPE may be impeded from taking disciplinary actions against private postsecondary institutions that admit students who do not meet ability-to-benefit requirement. At this writing, the Court of Appeals for the Ninth Circuit has reviewed both parties’ and *amici* briefs.

Securities and Exchange Commission v. Massimino, Case 2:19-cv-01374 (C.D. Cal.).

On March 1, 2019, in *Securities and Exchange Commission v. Massimino*, Case 2:19-cv-01374, the U.S. District Court for Central District of California ordered that defendant Jack D. Massimino is permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act, and from any violation of Section 17(a)(3) of the Securities Act of 1933, and shall pay a civil penalty in the amount of \$80,000 to the SEC under the Section 20(d) of the Securities Act. The Court also ordered that another defendant, Robert C. Owen, be permanently restrained and enjoined from aiding and abetting any violation of Section 13(a) of the Exchange Act and shall pay a civil penalty in the amount of \$20,000 to the SEC.

The defendants here are the CEO and the CFO of Corinthian, the for-profit chain of schools prosecuted by the California Attorney General and other authorities. According to the SEC, Corinthian had inflated its long-term debt and immediately repaid the loans after the beginning of the next fiscal year in order to get a Composite Score to receive federal funds. The USDOE recognized that the Corinthian's practice of inflating its Composite Score was a "questionable accounting treatment" under the Department's regulation, and Corinthian could not receive the claimed federal funds. Accordingly, Corinthian faced financial and regulatory risks but failed to disclose those facts and risks. Defendants reviewed and approved these public filings, which were allegedly misleading and incomplete, and Corinthian received cash proceeds from the issuance of common stock.

On February 25, 2019, after settling this case against the defendants, the SEC filed a [complaint](#) in U.S. District Court for Central District of California, arguing that Massimino negligently engaged in transactions, practices, and courses of business which operated as a fraud

and misled investors and that both defendants aided and abetted Corinthian's filing of misleading reports. On March 1, 2019, the Court issued the orders reliefs as the SEC requested. Although this lawsuit was not directly related to BPPE work, it would be notable that how for-profit institutions, such as Corinthian, has misled public and would harm students and consumers that BPPE protects through its oversight of institutions.

Lawsuits Against U.S. Department of Education for Failure to Grant Relief

The following cases—(a) *California v. U.S. Department of Education*, Case 3:17-cv-07106, (b) *Calvillo Manriquez v. DeVos*, Case 3:17-cv-07210, (c) *California Association of Private Postsecondary Schools v. DeVos*, Case 17-999, and (d) *Housing and Economic Rights Advocates v. DeVos*, Case 3:18-cv-06854—were filed against the USDOE and Betsy DeVos, in her official capacity as Secretary of Education. Note that although a resulting adverse court order would not directly apply to BPPE, if the courts do not compel USDOE to grant full relief, the students will likely apply for California STRF reimbursement for the failure to recover their prepaid tuition from the school.

(a) On March 4, 2019, in *California v. U.S. Department of Education*, Case 3:17-cv-07106, the U.S. District Court for the Northern District of California issued an order that denied in part and granted in part Defendant's Motion to Dismiss for lack of jurisdiction. On December 14, 2017, California Attorney General Xavier Becerra had filed a [complaint](#) against the Department and DeVos, alleging that the Department unreasonably delayed approval of more than 50,000 federal loan forgiveness claims submitted by former Corinthian College students and denied granting expedited, full relief to the borrowers. Note that Corinthian was successfully sued by the Attorney

General for unfair competition and numerous violations of law which resulted in its closure. As of this writing, a Further Case Management Conference has been set for May 6, 2019.

(b) On February 19, 2019, in *Calvillo Manriquez v. DeVos*, Case 3:17-cv-07210, the U.S. District Court for Northern District of California ordered the parties to submit simultaneous supplemental briefs addressing whether the Department’s development of the Average Earnings Rule was arbitrary and capricious. Plaintiffs are former Corinthian College students who attended the institution because of its misrepresentation of its education quality and job placement rates. Under the Borrower Defense Regulations, USDOE determined that the plaintiffs are entitled to have their federal student loans discharged because of Corinthian’s illegal conduct. On December 20, 2017, plaintiffs filed a [complaint](#) against the Department and DeVos, alleging that although the Department designed a special rule³ for former Corinthian students, it has unlawfully withheld application of the rule to the students’ borrower defense claims. The Complaint contends that the Department has illegally and unfairly denied relief to the students and that the Court should enjoin DeVos from applying the special rule and require the Department’s process to accord its prior rule.⁴ On May 25, 2018, the Court granted in part and denied in part Motion for Preliminary Injunction by ruling that while “borrowers sufficiently established likelihood of irreparable harm in absence of injunction and public interest and balance of equities factors weighed in favor of granting injunction, borrowers could not proceed on claim that DeVos violated their due process

³ Under this rule, the Average Earnings Rule, “borrowers who attended for-profit colleges that committed misconduct were entitled to relief from percentage of their student loan debt based on a comparison of earnings of graduates from the borrower’s program with earnings of graduates from a comparable school.” *Manriquez v. DeVos*, 345 F. Supp. 3d 1077, 1077 (2018).

⁴ Under this rule, “Corinthian Job Placement Rate Rule,” “borrowers who attended for-profit schools that committed misconduct were entitled to relief from all student loan debt.” *Manriquez*, 345 F. Supp. 3d at 1078.

rights by imposing the special rule and change in policy was not arbitrary and capricious in violation of Administrative Procedure Act.” *Manriquez*, 345 F. Supp. 3d at 1078. In this order, the Court requested additional briefing and oral argument on an issue that the Plaintiff raised. At this writing, the Court has reviewed the parties’ arguments from the hearing.

(c) On October 16, 2018, in *California Association of Private Postsecondary Schools v. DeVos*, Case 17-999, the U. S. District Court for District of Columbia denied Plaintiff’s motion for a preliminary injunction. Plaintiff, the California Association of Private Postsecondary Schools (CAPPS), represents schools subject to the Borrower Defense Regulations (“Regulations”), issued on November 1, 2016. On May 24, 2017, CAPPS filed a [complaint](#) against USDOE and DeVos, seeking a preliminary injunction against provisions of the Obama Administration regulations allowing group remedies. At this writing, the Court has reviewed the parties’ Motion and Cross Motion for Summary Judgment.

(d) On November 13, 2018, Housing and Economic Rights Advocates (HERA) filed a [complaint](#) against USDOE and DeVos in the U.S. District Court for Northern District of California, seeking declaratory and injunctive relief, in *Housing and Economic Rights Advocates v. DeVos*, Case 3:18-cv-06854. Plaintiff, HERA, is a non-profit organization that provides legal services on consumer debt and economic justice issues. The issues with which HERA’s legal assistance has dealt include student loans, medical, unfair debt collection and credit reporting, and predatory lending. Although on November 1, 2016, the Department issued Borrower Defense Regulations (“Regulations”) to protect federal education loan borrowers from schools’ predatory practices, such as obtaining a borrower’s waiver of right to participate in a class action lawsuit against school’s misconduct. Also, the Regulations provides that USDOE must grant discharges to

students whose schools closed and who do not re-enroll at another federal funding-eligible institutions. However, on June 14, 2017, on October 24, 2017, and on February 14, 2018, USDOE announced its delay of the Regulation. HERA contended that, in its complaint against USDOE and DeVos, Defendants had unlawfully withheld implementation of the Regulations in violation of section 706(1) of the federal Administrative Procedure Act. Also, HERA argued that USDOE's failure to implement the Regulations had impaired HERA's mission to provide legal assistance for student debt issues and also impeded its work on other aspects, such as abusive medical debt issues.

Since this complaint was filed, USDOE has described how it will implement the Regulations. With the expectation of the Department's compliance with the Regulations, on April 8, 2019, HERA voluntarily dismissed the lawsuit.

RECENT MEETINGS

At its November 7, 2018 [meeting](#), Ms. Margaret Reiter, the Vice-Chair of the Committee, raised an issue of the future of the Bureau. She suggested providing opportunities for the Bureau staffs to give recommendations to the Committee as well as the Bureau for BPPE to become the lead agency in addressing industry problems. Ms. Katherine Lee-Carey, the Chair of the Committee, noted that statutes give the Bureau the power to act in response to schools not meeting standards. Ms. Lee-Carey suggested that BPPE should provide more information on disciplinary actions taken. In that regard, Mr. Joseph Holt suggested that the Bureau should highlight impacts resulting from disciplinary action.

At its February 13, 2019 [meeting](#), according to Dr. Michael Marion, Jr., the Bureau Chief, the Bureau's final rulemaking file for modifications to the out-of-state registration regulation (sections 94850.5 and 94801.5 of Education Code) has been submitted to OAL and will be

approved. Also, the regulatory package of “English as a Second Language Programs” (section 70000(k) of CCR) has been approved by DCA, and the verification of exempt status package (sections 94874, 94874.2, 94874.7, 94874.5, and 94927.5 of Education Code; section 71395 of CCR) has been submitted for the normal process and will be approved by DCA before noticing with OAL. Compliance with Laws and Procedures regulatory package (section 71755 of CCR) will be submitted for review to DCA. Both Required Notices and Teach-Out Plans (section 76240 of CCR), Student Records, and the Maintenance of Records (sections 71920, 71930, 71940, and 71950 of CCR) packages are being developed and will be submitted for review to the Bureau legal counsel.